



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 00 022 50002 Office: California Service Center

Date:

AUG 1 2000

IN RE: Petitioner:  
Beneficiary



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER:



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prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an independent film and television production company. It seeks classification of the beneficiary as a film production trainee for a period of 22 months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country.

On appeal, counsel states that the Service erred in matters of fact and law in denying the H-3 petition.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--(A) Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program requires 22 months for completion. The ultimate objective of this program is to achieve

an international integrated network of associates with the overall objective of expanding business goals. The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program does not include the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee.

The petitioner explains that the quality and content of instruction and training that the beneficiary will receive during the course of the training program are not yet available in Japan. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in his own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. See Matter of Frigon, 18 I&N Dec. 164 (Comm. 1981). No evidence has been presented that such training does not exist in the beneficiary's home country.

This petition cannot be approved for other reasons. Counsel indicates that the beneficiary is an ideal candidate for the training position by virtue of his appropriate professional credentials and related experience in the basic skills of production work involved in film and television. The petitioner states further that the beneficiary also has the technical and professional foundation to enable him to effectively assimilate the program material. The beneficiary has related skills as a production assistant in television production and as a production coordinator in film production. Consequently, the beneficiary already has substantial training and expertise in the proposed field of training.

The petitioner states that the trainee's activities will at all times be coordinated and/or supervised by him. The petitioner has not explained how he will be responsible for the beneficiary's overall supervision in a program and still be able to perform his duties as president and producer of the company. The petitioner has not established that it has enough sufficiently trained manpower to provide the training specified.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.